

<b>Interview Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/624,732		SULLIVAN, GERALD P.	
	<b>Examiner</b>		<b>Art Unit</b>	
	James Zurita		3625	

All participants (applicant, applicant's representative, PTO personnel):

- (1) James Zurita. (3) Lewis Gable.  
 (2) Wynne Coggins. (4) \_\_\_\_\_.

Date of Interview: 22 October 2002.

Type: a) ☒ Telephonic b) ☐ Video Conference  
 c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☐ No.  
 If Yes, brief description: n/a.

Claim(s) discussed: references.

Identification of prior art discussed: as noted.

Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☒ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

JZ.

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Examiner's signature, if required

## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

#### Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

#### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case unless both applicant and examiner agree that the examiner will record same. Where the examiner agrees to record the substance of the interview, or when it is adequately recorded on the Form or in an attachment to the Form, the examiner should check the appropriate box at the bottom of the Form which informs the applicant that the submission of a separate record of the substance of the interview as a supplement to the Form is not required.

It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments:

I spoke with Mr. Gable at 1:30 pm:

When we reviewed ClaremontNewsLetter, I reminded Mr. Gable that the article was published in Mutual Fund Market News, a publication that is consulted by those interested in mutual funds.

I cut, pasted and xeroxed bottom portions of PTO 892's to date. Mr. Gable had faxed me copy of 6 references I had sent him. Several of the faxed copies had notations; all seem directed to dates mentioned in article.

I asked about getting a copy of proposed affidavit to facilitate discussion. Mr. Gable said that he had hoped to have an affidavit ready for discussion, but that affidavit was not ready as of an hour ago (prior to 130pm), but that he would fax us a copy if ready before the interview.

2pm: phone interview: Mr. Gable & Wynn & JZ, Wynn's office

Mr. Gable inquired concerning publication date of SEC filing, and how I had gone about obtaining the information. I told him that I did not think the steps I took were relevant for MPEP purposes, and that I did not recall the specific steps I took, but that I probably included at least the following:

On DialogWeb, I searched using words such as mutual, fund, stocks, industry, etc. I also included date parameters. From these searches, I obtained many articles, including:

- the ClaremontNewsLetter, which has references to a prospectus filed with the SEC, and information for investing in mutual funds. The article also provides the name of the fund's manager and other data.

- multiple references to SEC filing from Derwent

Since people asking for private money are required to file materials with the SEC, I continued my searches along various routes, including accessing the SEC web site. Using date parameters, I reviewed lists and contents of all filings for all companies and all mutual funds at the SEC, indexed in various forms. I said I did not recall specifically other types of searches I might have done on the SEC site.

Mr. Gable asked about the date of the SEC filing. I told him I was not sure what he meant by the SEC filing, since there are multiple copies of the original documents and materials and these copies are published in several different databases in electronic format. The different services received a copy from the original SEC filing and published the materials on their own databases.

I said that the six references are used to show that it is standard practice at the SEC to disseminate filing information to the public and to show that the information is accessible to the public from the SEC web site. I told him the SEC published the materials in December 1998. I told Mr. Gable I had sent him copies of the SEC filing from two additional sources (DialogWeb and WestLaw) to show that the SEC filing is published and accessible using at least these two other database tools, and that I suspected that the information had also been made public in many others, although I had only focused on two that are widely known.

Mr. Gable asked me concerning the publication dates of the materials on the two databases. We examined the dates printed on the materials from each of the two databases. For the WestLaw publication, I pointed out that it has a copyright date of 1998, and that a copyright date is used to show when something is published. Mr. Gable mentioned some exceptions to copyright date rules.

Wynn said she felt I had made a prima facie case concerning the references. We're awaiting Mr. Gable's response to my last office action.